

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

TRAVIS R. MCPEEK,

Plaintiff,

vs.

KELLIE WASKO, SECRETARY OF
CORRECTIONS, INDIVIDUAL AND
OFFICIAL CAPACITY; BRENT FLUKE,
WARDEN AT THE MIKE DURFEE STATE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; AARON HAYNES, SD DOC
MEDICAL DIRECTOR, INDIVIDUAL AND
OFFICIAL CAPACITY; JANE/JOHN DOE
MEDICAL PROVIDER(S), INDIVIDUAL
AND OFFICIAL CAPACITIES,

Defendants.

4:23-CV-04025-RAL

OPINION AND ORDER GRANTING
PLAINTIFF'S MOTION FOR LEAVE TO
AMEND COMPLAINT TO IDENTIFY
JANE/JOHN DOE MEDICAL
PROVIDER(S)

Plaintiff Travis R. McPeek, an inmate at the Mike Durfee State Prison, filed a pro se lawsuit under 42 U.S.C. § 1983. Doc. 1. This Court granted McPeek leave to proceed in forma pauperis and ordered him to pay a \$35.23 initial partial filing fee. Doc. 9. McPeek timely paid his initial partial filing fee. Before this Court screened McPeek's complaint, McPeek moved for leave to amend his complaint. Doc. 10. The Court granted McPeek's motion to amend his complaint, Doc. 12 at 2, and screened the amended complaint under 28 U.S.C. § 1915A, Doc. 12 at 2–13. After screening, the Court ordered service on Defendants Kellie Wasko, Brent Fluke, Aaron Haynes, and the John/Jane Doe medical provider(s). *Id.* at 16–17. McPeek sought leave to file a second amended complaint to correct a date, identify a DOC staff member who is not a defendant, and correct some spelling errors. Doc. 15 at 1. This Court granted McPeek's motion and directed the

Clerk of Court to file McPeek's proposed second amended complaint. Doc. 17 at 3. Defendants requested an extension of time to answer or otherwise respond to McPeek's second amended complaint to permit their counsel to review McPeek's voluminous Department of Corrections medical records in order to adequately respond to the allegations in his second amended complaint. Doc. 24. This Court granted Defendants' motion and ordered that Defendants serve and file answer or responsive pleading to the second amended complaint on or before October 23, 2023. Doc. 25. McPeek now seeks leave of court to file a third amended complaint to substitute Liz Paul, a medical provider at Mike Durfee State Prison, for the Jane/John Medical Provider(s). Doc. 30. McPeek has been unable to serve the Jane/John Medical Provider(s). See Doc. 28 at 3; Doc. 30 at 1.

Federal Rule of Civil Procedure 15(a)(1)(A) provides that a party may amend a pleading once as a matter of course twenty-one days after serving it. McPeek has already amended his complaint once as a matter of course. Doc. 10; Doc. 12 at 2. Thus, Federal Rule of Civil Procedure 15(a)(2) requires that McPeek obtain leave to file another amended complaint. Leave to amend "should be freely given in order to promote justice." Plymouth Cty. v. Merscorp, Inc., 774 F.3d 1155, 1160 (8th Cir. 2014) (citation omitted). Denial of a motion to amend "is appropriate in those limited circumstances in which undue delay, bad faith on the part of the moving party, futility of the amendment, or unfair prejudice to the non-moving party can be demonstrated." Hillesheim v. Myron's Cards & Gifts, Inc., 897 F.3d 953, 955 (8th Cir. 2018) (internal quotation omitted). Here, none of these circumstances exist. Defendants have not responded to McPeek's second amended complaint. Granting McPeek leave to file a third amended complaint to identify the John/Jane Doe Defendant(s) at this stage of the proceedings is in the interests of justice. McPeek's motion

to amend, Doc. 30 is granted, and the Clerk of Court shall file his proposed amended complaint, Doc. 30-2.

Accordingly, it is

ORDERED that McPeek's motion to amend complaint, Doc. 30, is granted. The Clerk of Court shall file McPeek's proposed amended complaint, Doc. 30-2. It is further

ORDERED that all Defendants, including Liz Paul, will serve and file an answer or responsive pleading to the third amended complaint, Doc. 30-2, on or before October 23, 2023. It is finally

ORDERED that the caption in all subsequent pleadings shall reflect that Liz Paul has been substituted for the John/Jane Doe Defendant(s).

DATED this 3rd day of October, 2023.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE